

ORDINANCE NO. 92-13

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA AMENDING ORDINANCES 77-7, 80-14, 82-13 and 84-17, 85-26; BY AMENDING CHAPTER 23, "LAND CLEARANCE" OF THE CODE OF LAWS AND ORDINANCES OF PALM BEACH COUNTY, FLORIDA; BY AMENDING SECTION 23-2, "INTENT"; BY AMENDING SECTION 23-3, "DEFINITIONS" AND RENUMBERING SUBSEQUENT SECTIONS; AMENDING SECTION 23-4, "NUISANCE TO BE ABATED"; BY AMENDING SECTION 23-6, "PROCEDURE FOR ENFORCEMENT"; PROVIDING FOR CODIFICATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 125.01(1), Florida Statutes, 1975, empowers Palm Beach County to adopt ordinances necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law, and

WHEREAS, Section 125.01(w), Florida Statutes, 1975, enables Palm Beach County to perform acts not inconsistent with law which are in the common interest of the people of the County, and

WHEREAS, certain substantive and procedural changes are appropriate in order to provide for the health, safety, and welfare of the citizens of Palm Beach County and to more effectively implement the lot clearing program for Palm Beach County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:

Section 1. Chapter 23 of the Palm Beach County Code of Laws and Palm Beach County Ordinances numbers 77-7, 80-14, 82-13 and 84-17, 85-26, are hereby amended as follows:

1
2 Section 23-1. Short title.

3 This Chapter shall be known and may be cited as the Palm Beach
4 County Lot Clearing Ordinance.

5
6 Section 23-2. Intent.

7 It is the intent of this ordinance to:

- 8 (1) establish and define minimum standards for the proper
9 care and cultivation of vegetation upon lots so that it
10 does not create a nuisance which annoys the community,
11 threatens injury to, or injures the public health,
12 safety, or welfare, or materially and adversely affects
13 the value, use, or enjoyment of properties in the
14 unincorporated portions of Palm Beach County;
- 15 (2) provide for the abatement of unhealthful, unsanitary, or
16 unsafe conditions constituting a nuisance or nuisances
17 upon lots;
- 18 (3) eliminate conditions which, if uncorrected, would promote
19 the growth and dispersal of disease-bearing insects,
20 vectors, rats, and poisonous snakes;
- 21 (4) remove uncultivated vegetation which may conceal or
22 promote the creation of nuisances upon lots;
- 23 (5) encourage the use of approved landfill sites by
24 clarifying the duty of land owners to take reasonable
25 precautions to prevent or discourage unauthorized dumping
26 of waste or refuse upon their lots;
- 27 (6) promote traffic safety by requiring clearance of
28 vegetation and other obstructions at street intersections
29 and railroad crossings;
- 30 (7) establish procedures to abate nuisances adjacent to
31 developed lots used or developed lots which have been
32 used for residential, commercial, or industrial purposes,
33 and nuisances constituting traffic hazards generally; and

- 1
- 2 (8) establish procedures to assure that the rights of lot
- 3 owners to the use and enjoyment of their land in a manner
- 4 not contrary to this ordinance are protected, and that
- 5 compliance with this ordinance and the abatement of
- 6 nuisances hereunder are done in a ~~way that~~ manner which
- 7 protects property rights.

8 This ordinance is not intended to discourage lot owners from

9 planting, preserving, or maintaining native vegetation in its

10 natural state upon their land. This ordinance shall not be

11 construed as restricting the Board of County Commissioners from

12 declaring nuisances or pursuing remedies thereto outside of the

13 provisions of this ordinance.

14

15 Section 23-3. Definitions.

16 The following definitions shall apply in the interpretation and

17 enforcement of this chapter:

- 18 (1) Adjacent property shall mean the lot or lots immediately
- 19 adjacent or contiguous to a lot that is subject to review
- 20 under this ordinance.
- 21 (2) Department shall mean the Palm Beach County Department of
- 22 Planning, Zoning and Building.
- 23 (3) Developed shall mean containing building, structures,
- 24 paving, or other improvements; excluding solely
- 25 underground utilities, pipes, wires, cables, culverts,
- 26 conduits, or other similar improvements or facilities; or
- 27 plantings; all of which are maintained and utilized in a
- 28 manner permitted by the Palm Beach County Zoning Code.
- 29 (4) Lot shall mean any tract or parcel of land other than an
- 30 approved landfill site.
- 31 (5) Native vegetation shall mean any plant species with a
- 32 geographic distribution indigenous to all or part of Palm
- 33 Beach County. Plant species which have been introduced
- 34 by man are not native vegetation.

1
2 (6) Owner shall mean the owner or owners of record of a lot
3 as such appears in the Official Records of the Clerk of
4 the Circuit Court in and for Palm Beach County.

5 (7) Repeat offenders shall mean those property owners who
6 were issued a lot clearing notice on the same property
7 during the preceding eighteen (18) month period.

8 ~~(7)~~(8) Rubble and debris shall mean waste materials
9 resulting from the construction or demolition of
10 structures or buildings.

11 ~~which are not usable as a part of, or for, the~~
12 ~~construction or demolition of structures or~~
13 ~~buildings.~~ This shall include construction
14 material left or abandoned on site.

15 ~~(8)~~(9) Street shall mean any strip of land which is open
16 to the public for the use of vehicular traffic and
17 containing delineations, signs, or other traffic
18 control devices to channel traffic.

19 ~~(9)~~(10) Tree shall mean any woody plant or palm which, in
20 its mature state under normal growing conditions,
21 reaches a height of fifteen (15) feet or greater.

22 ~~(10)~~(11) Uncultivated vegetation shall mean living plants
23 allowed to grow in an uncontrolled manner, or not
24 cared for or maintained on a regular basis.
25 Neither native vegetation in its natural state, or
26 mangroves subject to the Palm Beach County Mangrove
27 Protection Ordinance, shall be considered
28 uncultivated vegetation.

29 ~~(11)~~(12) Waste shall mean garbage, rubbish and refuse from
30 residential, commercial, or industrial activities,
31 including kitchen and table food waste, animal, or
32 vegetative waste that is attendant with or results
33 from the storage, preparation, cooking, or handling
34 of food material; paper, wood scraps, cardboard,

1
2 cloth, glass, rubber, plastic; discarded
3 automobiles, tires and automobile fixtures;
4 household goods and appliances; toys; tools and
5 equipment; and similar materials.

6 ~~(12)~~(13) Yard trash shall mean abandoned vegetative material
7 from landscaping, maintenance or land clearing
8 operations, and includes such materials as tree and
9 shrub trimmings, grass clippings, palm fronds, tree
10 limbs, tree stumps, and similar materials.

11
12 Section 23-4. Nuisance declared.

13 It is hereby declared and determined by the Board of County
14 Commissioners of Palm Beach County, Florida, that the following
15 shall each individually, or in any combination, be considered
16 nuisances when they exist upon a lot in the unincorporated area of
17 Palm Beach County:

- 18 (1) Accumulations of waste, yard trash, or rubble and debris;
19 (2) Accumulations of waste, yard trash, or rubble and debris
20 that may harbor rats or poisonous snakes or that may
21 contain pools of water that may serve as breeding grounds
22 for insects or other disease vectors;
23 (3) Uncultivated vegetation greater than eighteen (18) inches
24 in height;
25 (4) *Schinus terebinthifolius* (commonly known as Florida Holly
26 or Brazilian Pepper) bushes or trees, if uncultivated;
27 (5) Uncultivated vegetation that constitutes a fire hazard;
28 or
29 (6) Vegetation, whether or not cultivated, that impedes or
30 obstructs adequate view of intersections, traffic signs,
31 railroad crossings or traffic from any street, road, or
32 highway.
33

1
2 Section 23-5. Nuisance to be abated.

3 It is further determined by the Board of County Commissioners that
4 any nuisance declared by this ordinance which is found upon a lot
5 in the unincorporated area of Palm Beach County shall be abated in
6 the following manner:

7 (1) If the nuisance consists solely of accumulations of
8 waste, yard trash, or rubble and debris as provided in
9 Sections 23-4(1) and (2), it shall be abated in its
10 entirety, provided that the nuisance lies upon a lot
11 which is adjacent to a property which is developed and
12 used or has been used for residential, commercial or
13 industrial purposes; or

14 (2) If the nuisance consists solely of uncultivated
15 vegetation as provided in Section 20-19, Paragraphs (3),
16 (4), and (5), only so much of the nuisance shall be
17 abated as lies within twenty-five (25) feet of the
18 boundary of an adjacent property which is developed and
19 used or has been used for residential, commercial or
20 industrial purposes, where such developed propertie(s)
21 bound the subject parcel on one or two sides. If the
22 parcel upon which the nuisance exists is bounded by or
23 adjacent to three or more sides of developed property,
24 the entire parcel may be cleared. In cases involving
25 areas declared by the Board of County Commissioners as
26 blighted, pursuant to state statutes or in any cases
27 which there is evidence of vagrants using the overgrown
28 property for habitation or that crimes of a violent
29 nature or crimes involving the sale or possession of
30 illegal substances are occurring on the premises, then
31 the nuisance may be abated in its entirety, provided that
32 the nuisance lies upon a lot which is adjacent to
33 property which is developed. The evidence required must
34 be documented by the Palm Beach County Sheriff's
35 Department or other appropriate Law Enforcement Agency.

1
2
3 For purposes of this section only, right-of-ways shall be
4 considered adjacent, developed property. The owner and
5 the department are encouraged to preserve, and need not
6 clear trees and *Serenoa repens* (commonly known as Saw
7 Palmetto); and
8 provided further that the owner and the department are
9 encouraged to clear *melaleuca quinquenervia* (commonly
10 known as Punk Tree, Cajeput, or Paper Bark Tree),
11 *Casurina Spp.* (commonly known as Australian Pine); *Acacia*
12 *Ariculaeformis* (commonly known as Earleaf Acacia); and
13 provided further that the owner and the department shall
14 clear *Schinus terebinthifolius* (commonly known as
15 Brazilian Pepper or Florida Holly).

16 (3) If the nuisance consists of the obstruction of adequate
17 view of intersections, crossings or traffic signs as
18 provided in Section 23-4(6), the nuisance shall be abated
19 in accordance with the provisions of the Palm Beach
20 County Landscape Code, Section 4H (Sight Distance for
21 Landscaping Adjacent to Public Rights-of-way and Points
22 of Access), or, when not provided in that section, the
23 nuisances shall be abated so as to afford a clear,
24 unobstructed view; or

25 (4) If the nuisance consists in part of uncultivated
26 vegetation and in part of other nuisances declared by
27 this ordinance, the provisions of Section 23-5 (1), (2)
28 and (3) shall each apply to its abatement.

29
30 Section 23-6. Procedure for enforcement.

31 (1) The Department is empowered to enter upon and inspect
32 lots on which a nuisance is suspected to exist. If
33 inspection reveals the presence of a nuisance, the
34 Department shall notify the owner by registered or

1
2 certified mail, return receipt requested, sent to the
3 last known address of the owner, that a nuisance exists
4 which is a violation of this ordinance. The notice shall
5 also: (a) advise the owner of the right to a hearing as
6 provided in Section 23-7 of this ordinance; (b) specify
7 what corrective action must be taken; (c) state that a
8 failure to abate the nuisance will result in the
9 Department abating it, the cost of which action shall be
10 assessed against the property; and (d) that a lien shall
11 be recorded against the property. The appeal forms
12 required in Section 23-7 shall be included in the notice,
13 along with a statement that such must be used to appeal
14 the administrative determination. The owner shall have
15 thirty (30) days from the date notice is mailed to abate
16 the nuisance, unless said owner is determined to be a
17 repeat offender. Repeat offenders shall have fifteen
18 (15) days from the date the notice is mailed to abate the
19 nuisance.

- 20 (2) If an appeal is filed, enforcement action shall proceed
21 as provided in Section 23-7.
- 22 (3) If no appeal is filed as provided in Section 23-7, or if
23 the notice sent as provided in Section 23-6(1) is
24 returned unclaimed, ~~and after a diligent search on the~~
25 ~~part of the Department has failed to locate and notify~~
26 ~~the owner,~~ the Department shall upon the expiration of
27 the notification ~~thirty (30) day~~ period. reinspect the
28 lot to determine whether or not the nuisance has been
29 abated. If the Department determines that the lot still
30 harbors a nuisance, it shall cause its abatement
31 according to the

1
2 provisions of this ordinance. To accomplish that goal,
3 the Department or its agents, are authorized by the Board
4 of County Commissioner enter upon the lot and to take
5 steps reasonable necessary to effect abatement.

6 (4) If abatement is effected by the Department as provided in
7 Section 23-6(3), the cost to the county of abating the
8 nuisance on each lot, including an administrative and
9 operating fee of ~~one~~ two hundred fifty dollars ~~(\$100.00)~~
10 (\$250.00) shall be calculated and reported ~~by the~~
11 ~~Department to the Board of County Commissioners,~~
12 to the property owner. Such notice shall advise that
13 failure to pay the cost of abatement, plus the
14 administrative fee, within fourteen (14) days from date
15 of such notice will result in the County filing a lien
16 against the subject parcel for the total cost.
17 ~~Thereupon~~ Upon failure of the property owner to pay the
18 cost of abatement, plus administrative fee, the Board of
19 County Commissioners shall, by resolution, assess these
20 costs against the lot. The resolution shall describe the
21 lot, show the cost of abatement, and specify the
22 administrative and operating fee. The Clerk ~~of the~~
23 ~~Circuit Court~~ to the Board of County Commissioners in and
24 for Palm Beach County shall mail a notice of the
25 assessment to the owner at his last known address. Until
26 full payment is received, assessments shall be legal,
27 valid and binding obligations upon the property. The
28 assessment shall become due and payable to Palm Beach
29 County as of the date of the mailing of the notice of
30 assessment, interest shall begin to accrue at the rate of
31 twelve (12) percent per annum on any unpaid portion
32 thereof.

33 (5) As soon as possible after the assessment has been made by
34 resolution of the Board of County Commissioners, a
35 certified copy of the resolution shall be recorded in the

1
2 Official Records of Palm Beach County maintained by the
3 Clerk ~~of the Circuit Court~~ to the Board of County
4 Commissioners. A lien shall become effective on the date
5 that a copy of the resolution is recorded by the Clerk of
6 the Circuit Court.

7 (6) Such lien assessments, together with interest thereon,
8 may be enforced by civil action in the appropriate court
9 of Palm Beach County. The lien created hereby shall be
10 a first lien equal to a lien for nonpayment of property
11 taxes on any lot against which an assessment for costs to
12 abate a nuisance has been recorded and the lien shall
13 continue in full force until discharge by payment or
14 otherwise settled and released by the Board of County
15 Commissioners.

16 (7) The Clerk ~~of the circuit court~~ to the Board of County
17 Commissioners or Department shall mail a notice that a
18 lien has been recorded to the owner of record of each lot
19 described in the resolution. The notice shall be sent by
20 certified or registered mail, return receipt requested,
21 to the owner's last known

22 address. The notice shall be in a form prepared by the
23 Clerk ~~of the Circuit Court~~ to the Board of County
24 Commissioners which shall include the following
25 information:

- 26 (a) Name and address of the owner;
27 (b) Legal description of the lot where the nuisance has
28 been abated;
29 (c) Date of mailing of the notice of the lien;
30 (d) A brief description of the nuisance;
31 (e) Date that notice was originally sent to abate the
32 nuisance;
33 (f) A statement of the actual costs of abatement, the
34 administrative fee, and any interest due;

- 1
- 2 (g) Date and number of the Board of County Commissioner
- 3 resolution assessing the costs of abatement of the
- 4 nuisance;
- 5 (h) Instructions regarding payment and removal of the
- 6 lien; and
- 7 (i) Additional information as necessary and
- 8 appropriate.

9 Section 23-7. Appeal Procedure.

10 Within twenty-five (25) days after the initial notice of a nuisance

11 is sent by the Department as provided in Section 23-6, the lot

12 owner may make written request to the Palm Beach County

13 Environmental Control Hearing Board for a hearing to show that the

14 condition alleged in the notice does not exist, or to show that the

15 condition does not constitute a nuisance. Notice of the right to

16 a hearing shall be included in the initial notice to the lot owner.

17 The owner's appeal shall be submitted upon forms to be provided by

18 the Department, and shall be accompanied by a certified check or

19 money order in the amount of one hundred dollars (\$100.00) made

20 payable to Palm Beach County, which amount shall constitute a fee

21 necessary to defray the costs to the County, the Department, and

22 the Environmental Control Hearing Board of processing and

23 administering the appeal. Failure to file an appeal or to appear

24 before the Environmental Control Hearing Board in a timely way

25 shall be deemed a waiver of the lot owner's rights to appeal the

26 administrative action. The Palm Beach County Environmental Control

27 Hearing Board shall hear the appeal on its regularly scheduled

28 agenda. The Palm Beach County Environmental Control Hearing Board

29 shall give the lot owner seeking an appeal written notice of the

30 date and location of the scheduled hearing. At the hearing, the

31 County and the lot owner may introduce such evidence as is

32 relevant. The hearing shall be conducted in accordance with the

33 rules of procedure of the Environmental Control Hearing Board. The

34 decision of the Palm Beach County Environmental Control Hearing

35 Board shall be final.

1
2 Section 23-8. Appropriation and Budgeting of funds.

3 Clearing of lots is declared to be for a county purpose, and the
4 Board of County Commissioners of Palm Beach County is authorized to
5 appropriate funds and establish budget categories to carry out the
6 purposes of this ordinance. Funds received by the county under the
7 terms of this ordinance shall be credited to the appropriate
8 accounts of Palm Beach County as follows:

9 (1) Funds received pursuant to Section 23-6 (Procedure for
10 Enforcement) shall be deposited in the Planning, Zoning
11 and Building accounts of Palm Beach County;

12 (2) Funds received pursuant to Section 23-7 (Appeal
13 Procedure) shall be equally divided between and deposited
14 in the accounts of Planning, Zoning and Building and the
15 accounts of The Environmental Control Office. The funds
16 received hereunder as fees shall be used exclusively to
17 offset the cost of administering the functions for which
18 they were collected.

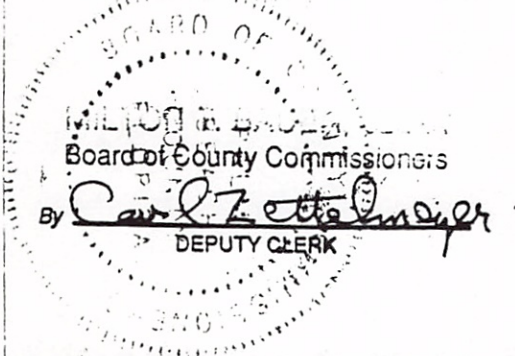
19
20 SECTION 2. INCLUSION IN CODE. The provisions of Section 1 of this
21 Ordinance shall be incorporated into the Code of Laws and
22 Ordinances of Palm Beach County as Chapter 23 thereof. The words
23 ordinance, article, chapter, and section may be changed to
24 accomplish codification, and the sections and paragraphs may be
25 renumbered to accomplish codification.

26
27 SECTION 3. SEVERABILITY. If any section, part of a section,
28 paragraph, sentence, clause, phrase or word of this Ordinance is
29 for any reason held or declared to be unconstitutional, inoperative
30 or void, such holdings or invalidity shall not affect the remaining
31 portions of this Ordinance and it shall be construed to have been
32 the legislative intent to pass this Ordinance without such
33 unconstitutional, invalid or inoperative part therein, and the
34 remainder of this Ordinance, after the exclusion of such part or
35 parts, shall be deemed to be held valid as if such part or parts

1
2 had not been included therein, or if this Ordinance or any of the
3 provisions thereof shall be held in group of persons, property,
4 kind of property, circumstances or set of circumstances, such
5 holding shall not affect the applicability thereof to any person,
6 property or circumstances.

7 SECTION 4. EFFECTIVE DATE. The provisions of this Ordinance shall
8 become effective upon receipt from the Florida Secretary of State
9 of official acknowledgement that this Ordinance has been filed with
10 the Department of State.

11
12 PASSED AND ADOPTED: This 21st day of April, 19 92



BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA

BY: [Signature]
Chairman

22 Approved as to Form and
23 Legal Sufficiency

24
25
26
27
28
29

County Attorney

30 Acknowledged by the Department of State of the State of Florida, on
31 this the 27th day of April, 19 92.

32 Effective Date: Received from the Department of State and filed on
33 this 1st day of May, 19 92 at 12:00 NOON p.m.

STATE OF FLORIDA
The ex-officio Clerk of the Board of County Commissioners
certify this to be a true and correct copy of the original
my office on 4-21-92
DATED at West Palm Beach, Florida, on 5-6-92
Clerk, BCC
By: [Signature] D.C.